IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6122 of 1994

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REVAGIRI RAMGARI GOSAI

Versus

DISTRICT PANCHAYAT KUTCH

Appearance:

1. Special Civil Application No. 6122 of 1994

MR PV HATHI for Petitioner No. 1

M/S PURNANAND & CO for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 24/09/2004

ORAL JUDGEMENT

A short question which is, in focus, in this petition under Article 226 of Constitution of India is,

for the relief seeking direction against respondent panchayat to consider the period of suspension from, 17/9/1980 to 20/9/1990, as period spent on duty and to make payment towards full pay and allowances for the aforesaid entire period with interest at the rate of 18% from 20/9/1990 the date on which the petitioner came to be reinstated after unsuccessful criminal prosecution initiated against him, as early as, in November, 1979.

2. After having heard learned advocate Mr.Hathi and since none appeared for and on behalf of the respondent authority, at the time of final hearing and considering the entire factual conspectus, emerging from the record of this petition following aspects have remained unquestionable.

(1) Petitioner was placed under suspension by Dy.District Development Officer (Revenue) of Kutch District, who passed an order of suspension against the petitioner on 17/4/1980, in view of a criminal complaint having been filed against the petitioner under various sections of Indian Penal Code, which came to be terminated by an order, dated 11/9/1990, by the same authority by which manifestly states that upon acquittal from the prosecution against the petitioner, the period of suspension was ended and he was taken back in the service as Talati-cum-Mantri on his original post and keeping the further order for regularization of the said period deferred for deciding later which unfortunately could not be finalised and petitioner was left with no alternative but to knock the doors of justice by invoking writ jurisdiction under Article 226.

(2) It is manifestly apparent from the record that the petitioner had to resort to this constitutional writ remedy as his rightly raised grievance was not redressed for a long time for more than 5 years and the litigation which explicitly appears to be avoidable and unnecessary came to be started on account of gross-indifferenceness was on the part of the respondent panchayat.

(3) The indifferenceness shown in the

redressal process of rightful grievance raised by petitioner, on the part of respondent panchayat has continued till date in his dispute, as no affidavit in reply has also been filed, so far, and none has cared to represent the respondent panchayat. What a great and callous apathy and indifferences on the part of the administrative mechanism of respondent panchayat which could be characterized and branded as insensitive to humane approach and rightful problems.

3. The Rule 152 of the Bombay Civil Services Rules, 1959, read with Rule Gujarat Panchayat Services (Discipline and Appeal) Rules, 1964, it is incumbent upon the employer to pass appropriate order in the light of the facts objectively in the event of revocation of suspension order as to how the period of suspension be treated. It will be, therefore, important to refer Rule 152 which read here as under:

152. (1) When a Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to for the reinstatement shall consider and make a specific order.-

(a) Regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or in the case of suspension that it was wholly unjustified the Government servant shall be given the fully pay and allowances to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be.

(3) In other case, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe;

Provided that the payment of allowances under clause (2) or (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose.

4. Despite clearly observing and explicitly articulating in the revocation of suspension order and while placing by reinstatement of the petitioner to his original post, as Talati-cum-Mantri, it has been observed in the order itself that for consideration of the period of suspension, as to how it should be treated, a separate order shall be passed, later on, and that expression of passing such an order later on, never happened, or arose until the petition was filed and direction was given in the interim order by this Court, on 20th April, 1996.

5. Pursuant to the said direction it has been now stated by learned advocate Mr.Hathi for the petitioner that the matter was considered by the respondent panchayat and the petitioner has been paid full amount due and payable during the period of suspension after treating the said period of suspension, as on duty for all purposes in the light of the provisions of Rule 152 of B.C.S.R and how it is the only question remains is with regards to the interest for which, Mr.Hathi, has not fairly agitated even in absence of any representation for and on behalf of the respondent panchayat.

6. Apart from non-representation and gross pathetic and indifferent approach to the important issue of passing appropriate order mandated by provisions of Rule 152, the facts and circumstances highlighted in the petition and those highlighted which are relevant to the determination of the only issue in this petition hereinabove, and the relevant provisions of Rule 152 the petitioner is done gross injustice for a long spell of time which is required to be redressed by allowing his petition as so far respondent panchayat has passed order pursuant to the direction given by this Court, in interim order, on 20th April, 1996, upon hearing the parties even a bare look at Rule 152 will go to show that there is statutory incumbency upon the disciplinary authority to pass appropriate order in terms of, Rule 152, and with the backdrop of the facts of the case. Therefore, this petition deserves to be fully allowed with exemplary cost

which is quantified at Rs.3,000/-. In the result the petition is, therefore, allowed. Rule is made absolute with special cost of Rs.3,000/-.

(Dr.J.N.Bhatt, J.)
smita/